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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/714,694  
Filing Date: November 17, 2003  
Appellant(s): WEDEMEYER, LOWELL R.

\_\_\_\_\_  
Lowell R. Wedemeyer  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/25/2010 appealing from the Office  
action mailed 1/4/2010.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 33-46 are pending in the application and claims 33-46 are rejected in the application.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner:

Claims 33-34, 37-38, 40-41 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Liou (US Patent 6,273,713).

Claims 35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liou (US Patent 6,273,713) in view of Rodriguez (US Patent 6,428,316).

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

1,389,436	Cameron	8-1921
6,428,316	Rodriguez	8-2002
4,889,327	Seyler	12-1989
4,041,937	Diaz	8-1977

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37 and 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim fails to set forth any additional structure. Moreover, Applicant uses the term "improved," but fails to specify what is improved and how it is improved.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-34, 40-41, 43 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron (US Patent 1,389,436). Cameron discloses a cheek pouch anchor (fig. 1) comprising a coil spring (6) to be placed within a user's cheek pouch (Lines 61-66) that compresses as the user's jaw closes and expand as the jaw opens because the anchor (fig. 1) is a resilient coil spring (6). The anchor (fig. 1) maintains a

span across the user's inter occlusal space and a user's lip opening as the user's jaws and lips open and close (p. 1, lines 97-105). The anchor has sufficient structural strength to receive a work piece (p. 1, lines 75-83). The anchor (fig. 1) is capable of carrying a substance that can be released in to the mouth of the user because it is fully capable of being coated in a flavoring, antiseptic, antibacterial, or any other coating deemed necessary by the physician. That coating would inherently be released in the mouth upon insertion of the anchor (fig. 1) into the oral cavity. The coil spring (6) is of Nickel, which is a metal (p. 2, lines 30-35). The adapted to language used in claim 1 does not further limit the particular structure claimed. It merely list steps the device should optionally be able to perform. See MPEP 2111.04 [R-3]. The Cameron device is capable of being placed within a user's cheek pouch, compressing when the user's jaw closes, resiliently expanding to form a bridge spanning across a user's inter occlusal space and a user's lip opening formed as a user's jaws and lips open and close, receiving joinder to a work piece, and having enough structural strength when joined with a work piece to maintain placement within a user's cheek pouch while a user's lips and jaws open and close.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Rodriguez (US Patent 6,428,316). Cameron substantially discloses the claimed invention; see rejection to claims 33 and 41 above. Cameron fails to disclose the fluid conduit joined to the anchor. However, Rodriguez teaches a fluid conduit (17) that can be coupled to an anchor (fig. 1) by inserting it through the center of the coil spring (6), and used during dental procedures. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Cameron device with the fluid conduit, as taught by Rodriguez, in order to remove excess saliva or other fluids from the user's mouth during procedures.

Claims 36, 39 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Seyler (US Patent 4,889,327). Cameron substantially discloses the claimed invention; see rejection to claim 33 above. Cameron fails to explicitly state the coil spring (6) comprises a plurality of loops or merely one. However, it is well known in the art that coil springs can vary the number of loops in order to vary the force applied by the spring. Moreover, Seyler teaches a

spring (30) comprising a plurality of loops (31). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Cameron device to have a plurality of loops, as taught by Seyler, in order to vary the force applied by the device for specific users because the increased number of loops would increase the strength of the spring by distributing the force over more springs. The spring element Cameron/Seyler device has a span size and the span size is adjustable such that when the span size of one of the loops is increased or decreased, it increases or decreases the span size of an adjacent loop; thereby enabling adjustment of the whole spring element span size. This adjustment means occurs because the anchor is made of one continuous piece of material.

Claims 37-38 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Diaz (US Patent 4,041,937). Cameron substantially discloses the claimed invention; see rejection to claim 33 above. Cameron fails to disclose an impregnation or a coating on the spring element to be released in the mouth of the user. However, Diaz teaches antiseptic coatings (col. 1, lines 48-61) disposed upon medical device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Cameron device with the antiseptic coating, as taught by Diaz, in order to sanitize the device provide a pleasant taste in the user's mouth. The adapted to language used in claim 1 does not further limit the particular structure claimed. It merely list steps the device should optionally be able to perform. See MPEP 2111.04 [R-3]. The Cameron/Diaz device is capable of being placed within a user's cheek pouch, compressing when the user's jaw



closes, resiliently expanding to form a bridge spanning across a user's inter occlusal space and a user's lip opening formed as a user's jaws and lips open and close, receiving joiner to a work piece, and having enough structural strength when joined with a work piece to maintain placement within a user's cheek pouch while a user's lips and jaws open and close.

#### **(10) Response to Argument**

##### **DETAILED ISSUES AND ARGUMENTS ANTICIPATION UNDER 35 U.S.C. 102(b).**

**ISSUE 1.** Appellant argues the Office has contradicted Appellant's special definition for of the anatomical term "User's Cheek Pouch" and incorrectly construes a "User's Cheek Pouch" to include the occlusal, lingual, and interstitial surfaces of a user's teeth, as well as, the inter occlusal space between a user's upper and lower teeth. The Office respectfully disagrees because weight was given to Appellant's special definition, but the Cameron device fits within the limitations of the special definition.

**ISSUE 1.1.** Appellant argues he is entitled to act as his own lexicographer to specifically define the term "User's Cheek Pouch" in the specification. The Office agrees the Appellant is allowed to act as his own lexicographer and imbue a special definition of a term, as long as the definition has been provided in Appellant's specification, which Appellant has done.

**ISSUE 1.2.** Appellant argues the special definition of "User's Cheek Pouch" is defined in the specification and illustrated in Figure 3 to exclude the occlusal, lingual, and interstitial surfaces of a patient's teeth, and also exclude the gap (inter occlusal

space) between a user's upper and lower teeth. The Office Agrees with Appellant's purported definition of "User's Cheek Pouch," cited in Paragraphs [0041] of Appellant's Specification.

**ISSUE 1.3.** Appellant argues The Office contradicts Appellant's definition of "user's cheek pouch" because The Office stated that the Cameron device is sized to fit within the user's teeth and on one side of the user's mouth and fit into the corresponding user's cheek pouch. However, The Office has construed Appellant's cheek pouch anchor as the coil spring (6) of Cameron. The coil spring (6) fits within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. Therefore, the coil spring (6) anticipates independent claims 33, 40, 41 and 43.

**ISSUE 1.4.** Appellant argues the Cameron device is structured to engage the occlusal and lingual surfaces of a user's teeth and to fit between the user's teeth, and therefore necessarily extends outside of and cannot fit within the user's cheek pouch. Appellant points to the plates (7, 7), as the portion of the Cameron device that extends beyond the user's cheek pouch. The Office has construed Appellant's cheek pouch anchor as the coil spring (6) of Cameron. The coil spring (6) fits within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. Therefore, the coil spring (6) anticipates independent claims 33, 40, 41, 43 and 46.

Appellant argues the Cameron device does not expand and compress as the user's jaws open and close. However, the Cameron device is a coil spring (6), which

would compress under the force of the user's jaw (p. 1, lines 89-96). The Office acknowledges the Cameron states that a use of the plates (7, 7) is to prevent the teeth from touching and damage the instrument. However, that also means Cameron has anticipated a cheek pouch anchor without the plates (7, 7), which is what Cameron improved upon. Therefore, the cheek pouch anchor that Cameron improved upon is the coil spring (6).

**ISSUE 2.** Appellant argues The Office misconstrued the word within to mean simultaneously inside and outside of and thereby violating the rule that a word must be given its plain English meaning consistently with an Appellant's specification. However, according to American Heritage Dictionary, 4th Ed., within means "in or into the inner part; inside." Therefore, the within the user's cheek pouch can be construed to mean simultaneously inside and outside of the user's cheek pouch, or into the inner part of the user's cheek pouch.

**ISSUE 3.** Appellant argues the claim limitations "sized to fit within one of the user's cheek pouches" does not read on Cameron or on Liou. Appellant's argument that the claim limitation does not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. Appellant contends that the Office has not accorded weight to the phrase "fit wholly within a user's cheek pouch." However, The Office has afforded weight to fit wholly within a user's cheek pouch, because the coil spring (6), as taught by Cameron, fits within the user's cheek pouch (p. 1, lines 61-66).

**ISSUE 3.1.** Appellant argues the spring elements of Cameron and the Liou do not inherently have the capability to self-stabilize within a patient's cheek pouch if their

attachments to upper and lower teeth were to be served. Appellant's argument that the claim limitation does not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. With respect to the Cameron device, the coil spring (6) has the ability to stabilize within the user's cheek pouch (p. 1, lines 61-66). In order to retain the user's mouth in an open position (p. 1, lines 97-105).

**ISSUE 3.2.** Appellant argues it would only be accidental is some version of Cameron's wires (5) and coil (6) could self-stabilize in a cheek pouch when severed from attachment to upper and lower teeth. Appellant contends that the coil spring (6), when severed from the plates (7) would not be able to self-stabilize within the user's cheek pouch. However, the severing of the plates (7) would not prevent the coil spring from stabilizing within the user's mouth. The Office has given self-stabilize its broadest most reasonable definition, which is to make stable or steadfast, as defined by American Heritage Dictionary, 4th Ed. The coil spring (6) is fully capable of being stable within the user's cheek pouch when it is in an expanded configuration because the bottom tip would contact the lower portion of the cheek pouch and the upper tip would contact the upper portion of the cheek pouch in an expansive manner that would cause it to remain stable until moved by the user.

**ISSUE 3.3.** Appellant argues that even if the Cameron and Liou devices can perform the claimed cheek pouch anchor, they still would not anticipate the claimed because there are structural differences. Appellant's argument that Liou has structural differences from the claimed invention is moot because Liou was not cited in the final rejection presently on appeal. Appellant has not stated the structural difference

between the Cameron device and the claimed invention; therefore, that argument is unpersuasive.

**ISSUE 3.4.** Appellant argues the claim limitation “sized to fit within one of a user’s cheek pouches” is closed, not open syntax. The preceding claim limitation is open syntax because the preambles of the claims (41 and 43) containing this limitation state “comprising” as the transition word between the preamble and the body of the claims. “The word comprising transitioning from the preamble to the body signals that the entire claim is presumptively open-ended.” *MPEP 2111.03*. However, Appellant is ignoring the preambles of claim. Therefore, the abovementioned claim limitation is presumptively open syntax.

**ISSUE 3.5.** Appellant argues neither Cameron nor Liou’s device can fit within one cheek pouch. Appellant’s argument that Liou cannot fit within one cheek pouch is moot because Liou was not cited in the final rejection presently on appeal. Cameron’s coil spring (6) fits within the user’s cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user’s teeth are not being construed as part of the cheek pouch anchor. Therefore, the Caremon device (6) fits titling one of the user’s cheek pouches. Moreover, Appellant has used open language, comprising as the transition word, in the corresponding claims; therefore, the device must be able to fit within the user’s cheek pouch, but it also may extend beyond the user’s cheek pouch.

**ISSUE 3.6.** Appellant argues neither Cameron’s nor Liou’s device can fit within two cheek pouches. Appellant’s argument that Liou cannot fit within two cheek pouches

is moot because Liou was not cited in the final rejection presently on appeal. However, The Office has not claimed that Cameron's device can fit within two cheek pouches. In the response to arguments sections of previous Office Actions, The Office makes the claim that the claimed invention could simultaneously fit within both cheek pouches, as a demonstration of the open claim language. Therefore, this argument is moot because The Office has not asserted that the Cameron device can simultaneously fit within two cheek pouches.

**ISSUE 3.7.** Appellant argues the claim limitations "adapted to be placed within a user's cheek pouch" and "sized to fit within a user's cheek pouch" do not read on either Cameron or Liou. Appellant's argument that the claim limitations "adapted to be placed within a user's cheek pouch" and "sized to fit within a user's cheek pouch" do not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. Cameron's coil spring (6) is adapted to be placed and sized to fit within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. Therefore, Cameron reads on the claim limitations "adapted to be placed within a user's cheek pouch" and "sized to fit within a user's cheek pouch."

**ISSUE 3.8.** Appellant argues the claim limitation "sized to fit within one of a user's cheek pouches" does not read on Cameron or Liou. Appellant's argument that the claim limitation "sized to fit within one of a user's cheek pouches" does not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. Cameron's coil spring (6) is adapted to be placed and sized to fit within the user's cheek

pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. Therefore, Cameron reads on the claim limitation "sized to fit within one of a user's cheek pouches."

**ISSUE 3.9.** Appellant argues the claim limitation of "spring means that fit wholly within a user's cheek pouch" does not read on Cameron of Liou. Appellant's argument that the claim limitation of "spring means that fit wholly within a user's cheek pouch" does not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. Cameron discloses that the coil spring (6) fits flush against the user's cheek pouch (p. 1, line 61-66). The coil spring (6) does not extend beyond the outer surface of the user's gum/teeth. The plates (7, 7) extend beyond the outer surface to the bite surface of the teeth; however, the plates (7, 7) are not being construed by The Office as the cheek pouch anchor. Therefore, the Cameron reads on the claim limitation of "spring means that fit wholly within a user's cheek pouch."

**ISSUE 4.** Appellant argues the claim limitation of "flexibly compresses to allow a user's jaw and lips to fully close while said spring element is within one or more of a user's cheek pouches" does not read on Cameron or Liou. Appellant's argument that the claim limitation of "flexibly compresses to allow a user's jaw and lips to fully close while said spring element is within one or more of a user's cheek pouches" does not read on Liou is moot because Liou was not cited in the final rejection presently on appeal. The Cameron device is a coil spring (6), which is configured to flexibly compress under a compressive force and expand when not under a compressive force.

Applicant contends that a user's teeth can compress the coil spring, but not the soft tissue of the user's mouth. However, that contention is unfounded. The ability to compress a coil spring with the soft tissue of the mouth depends on the stiffness of the spring and the strength of the soft tissue in the user's mouth. Cameron discloses the coil spring (6) does not hold the jaw in a rigid position (p. 1, lines 97-105). The stiffness of the coil spring is not specifically stated, therefore, it would be an obvious design choice of the user in order to meet specific needs; since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**ISSUE 4.1.** Appellant argues the claimed wide range of expansion of the cheek pouch anchor structurally distinguishes it from the devices of Cameron and Liou. Appellant's argument that the claimed wide range of expansion of the cheek pouch anchor structurally distinguishes it from the Liou device is moot because Liou was not cited in the final rejection presently on appeal. Cameron discloses that the coil spring (6) fits flush against the user's cheek pouch (p. 1, line 61-66). The coil spring (6) does not extend beyond the outer surface of the user's gum/teeth. The plates (7, 7) extend beyond the outer surface to the bite surface of the teeth; however, the plates (7, 7) are not being construed by The Office as the cheek pouch anchor. Therefore, Cameron range of expansion isn't structurally distinguished from the claimed invention because it fits within the cheek pouch anchor.

**ISSUE 5.** Appellant argues the devices of Cameron and Liou does not teach a spring element sized to fit within one of a user's cheek pouches and that the spring



element flexibly compresses to allow a user's jaw and lips to fully close while said spring element is within one or more of a user's cheek pouches. Appellant's argument that the claimed limitations do not read on the Liou device is moot because Liou was not cited in the final rejection presently on appeal. The Cameron device is a coil spring (6), which is configured to flexibly compress under a compressive force and expand when not under a compressive force. Cameron's coil spring (6) is adapted to be placed and sized to fit within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. Applicant contends that a user's teeth can compress the coil spring, but not the soft tissue of the user's mouth. However, that contention is unfounded. The ability to compress a coil spring with the soft tissue of the mouth depends on the stiffness of the spring and the strength of the soft tissue in the user's mouth. Cameron discloses the coil spring (6) does not hold the jaw in a rigid position (p. 1, lines 97-105). The stiffness of the coil spring is not specifically stated, therefore, it would be an obvious design choice of the user in order to meet specific needs; since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**ISSUE 5.1.** Appellant argues the Cameron and Liou devices do not have a spring element adapted to be placed within a user's cheek pouch to compress as a user's jaw closes and expand as a user's jaw and lips open and close. Appellant's argument that the claimed limitations do not read on the Liou device is moot because Liou was not cited in the final rejection presently on appeal. Cameron's coil spring (6) is

adapted to be placed and sized to fit within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. The spring (6) would compress as the user jaw closes because it would be a compressive force upon the coil spring and the device is not intended to keep the jaw in a rigid position (p. 1, lines 97-105). The user is fully capable of closing his lips when the coil spring has been compressed. Therefore, the Cameron device reads on the claim limitations.

**ISSUE 5.2.** Appellant argues the Cameron and Liou devices do not have a spring element adapted to be placed within a user's cheek pouch to compress as a user's jaw closes and expand as a user's jaw and lips open and close. Appellant's argument that the claimed limitations do not read on the Liou device is moot because Liou was not cited in the final rejection presently on appeal. Cameron's coil spring (6) is adapted to be placed and sized to fit within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant, because the plates (7) that contour to the user's teeth are not being construed as part of the cheek pouch anchor. The spring (6) would compress as the user jaw closes because it would be a compressive force upon the coil spring and the device is not intended to keep the jaw in a rigid position (p. 1, lines 97-105). The user is fully capable of closing his lips when the coil spring has been compressed. Therefore, the Cameron device reads on the claim limitations.

**ISSUE 5.3.** Appellant argues the Cameron and Liou devices do not read on the claim limitation of a spring element adapted to be places within a user's cheek pouch and to compress as a user's jaw closes. Appellant's argument that the claimed

limitations do not read on the Liou device is moot because Liou was not cited in the final rejection presently on appeal. Cameron's discloses a coil spring (6) adapted to be placed and sized to fit within the user's cheek pouch (p. 1, lines 61-66), as defined by Appellant. The coil spring (6) compresses as the jaw closes (p.1, lines 97-105). Therefore, the Cameron device reads on the claim limitations.

**ISSUE 6.** Appellant argues the Cameron and Liou devices need more force to compress than the claimed invention and the Cameron device is not compressible by soft tissue in the mouth. Applicant's argument, with respect to Liou, is moot because Loiou is not cited in the final rejection presently on appeal. The ability to compress a coil spring with the soft tissue of the mouth depends on the stiffness of the spring and the strength of the soft tissue in the user's mouth. Cameron discloses the coil spring (6) does not hold the jaw in a rigid position (p. 1, lines 97-105). The stiffness of the coil spring is not specifically stated, therefore, it would be an obvious design choice of the user in order to meet specific needs; since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**ISSUE 6.1.** Appellant argues The Office contradicts Cameron's specification because the Cameron plates (7, 7) are specifically structures to insert between the patient's upper and lower teeth and to prevent the patient's teeth from fully closing. The coil spring (6) is compressible and allows the jaw to close (p. 1, lines 97-105). The lips are fully capable of being closed when the jaw has been closed. Cameron does not disclose that the plates (7, 7) prevent the lips and jaw from closing, but the teeth. In

addition, The Office is construing the coil spring (6) as the cheek pouch anchor, and that does not have plates (7, 7) to prevent closure of the jaw or lips.

**ISSUE 7.** Appellant's arguments refer to a statement in Final Office Action mailed May 13, 2008, which has since been withdrawn. Therefore, the argument is moot and has not been addressed in the instant Examiner Answer.

**ISSUE 8.** Appellant argues all the rejections under 35 U.S.C. 103 for obviousness have a common, threshold defect in that they begin with a false premise that teeth-engaging dental devices anticipate the claimed cheek pouch anchor. However, as disclosed in the Grounds of Rejection above and the arguments above, the Cameron device reads on the claimed cheek pouch anchor.

**ISSUE 8.1.** Appellant argues the combination of the cheek pouch anchor with other elements is not obvious because the cheek pouch anchor itself is novel. Appellant's argument that Liou does not anticipate the cheek pouch anchor is moot, because Liou is not cited in the Final Office Action presently on appeal. As disclosed in the Grounds of Rejection above and the arguments above, the Cameron device reads on the claimed cheek pouch anchor.

**ISSUE 8.2.** Appellant argues proposes modifications of the Cameron and Liou devices would render those devices unsatisfactory for the purposes intended by Cameron and Liou. Appellant's argument that Liou does not anticipate the cheek pouch anchor is moot, because Liou is not cited in the Final Office Action presently on appeal. Appellant further argues that if the Cameron coil spring (6) is a resilient filament that remains stable within a cheek pouch by expanding and compressing while the user's

jaw opens and closes with no attachment to the teeth would eliminate the dental retraction function of Cameron. However, the coil spring (6) is a resilient filament, by nature of being a spring, and it does not need to attach to the teeth in order to retract the user's jaw. The expansive forces of the coil spring (6) on the soft tissue of the user's mouth is sufficient to retain the jaw in a retracted position. Therefore, the Cameron device is not insufficient for the intended purpose of retracting the user's jaw.

**ISSUE 9.** The Office acknowledges the typographical error in the grounds of rejection of claim 45; it should have stated Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Rodriguez (US Patent 6,428,316).

**ISSUE 10.** Appellant argues claim 45 is not rendered obvious by Cameron in view of Rodriguez. Appellant further contends that Rodriguez does not teach joinder of the spring element to the fluid conduit by lacing the fluid conduit through a hole in the spring element and that if it were done; it would make the device physically unworkable. However, Cameron discloses the spring coil (6) is to be used with suitable attachments (p. 1, lines 78-88). Rodriguez teaches a fluid conduit, which is used to remove excess fluid from the user's mouth during a dental procedure. Therefore, it would have been obvious to one of ordinary skill in the art to use the Cameron device with the fluid conduit of Rodriguez. With respect to the fluid conduit being inserted through the hole in the coil spring; it would have been obvious to one of ordinary skill in the art to insert the fluid conduit through the hole in the spring coil, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

**ISSUE 11.** Appellant argues claims 36 and 39 are not rendered obvious by Cameron's dental retractor in view of Seyler's multi-coil torsion spring. Appellant claims it would not have been obvious to modify the Cameron coil spring with multiple loops, as taught by Seyler, for adjustment purposes. However, the number of coils, diameter of the coils and the lengths of the legs inherently possess adjustment mechanisms. Changing the number of coils would either increase or decrease the force applied by the spring. Changing the diameter of the loops would either increase or decrease the spring constant. And, changing the length of the legs would also change the spring constant. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Cameron coil spring more loops that can be adjusted in order to adjust the forcefulness of the Cameron coil spring.

**ISSUE 11.1.** Appellant argues the mechanism of adjustment is not inherent in Seyler's spring because Seyler's spring coils balance between flexibility and resilience would have to be optimized. However, the number of coils, diameter of the coils and the lengths of the legs inherently possess adjustment mechanisms. Changing the number of coils would either increase or decrease the force applied by the spring. Changing the diameter of the loops would either increase or decrease the spring constant. And, changing the length of the legs would also change the spring constant. Therefore, changing the span of the Cameron/Seyler loops or legs would adjust the force of the spring. Moreover, a user would be able to optimize the flexibility and resiliency of the spring coil by adjusting the loop size and the leg length.

**ISSUE 11.2.** Appellant argues Seyler's device does not anticipate or suggest the particular kind of structural adjustability of the cheek pouch anchor that is stated in claims 36 and 39. Appellant further argues that The Office has misapplied the inherency test. However, the rejection of claims is an obviousness type under 35 U.S.C. 103(a). Therefore, The Office properly stated that the Cameron/Seyler device is used for the same purpose as the claimed invention and Cameron does not teach the specific force of the Cameron coil spring; thus, it would have been obvious to one of ordinary skill in the art to modify the Cameron coil spring with the adjustability of the Seyler coil spring in order to optimize the force of the Cameron coil spring for use.

**ISSUE 11.3.** Appellant argues a person of ordinary skill would not adjust Cameron's device by simple, straightforward bending of Cameron's wires, rather than by the complex method of adding a plurality of spring coils to enable mutually-converse adjustment of the loops. However, the bending of the spring loops, adding of coils, or varying the length of the legs are easily predictable ways of adjusting the force of the spring since the force of the spring is calculated using equations where the preceding elements are variables. In addition, the adjustment of the spring can be done mechanically through an automated system where you input the variables or by the hand of the user. Slight complexity in adjustment does not eviscerate the motivation for the adjustment because the standard for an obviousness rejection requires motivation, not subjective simplicity.

**ISSUE 11.4.** Appellant argues a person of ordinary skill would not adjust Liou's device by the simple bending method suggested by Liou, rather than by the complex

method of adding a plurality of spring coils to enable mutually-converse adjustment of the loops. This argument is moot because Liou has not been cited in the Final Office Action currently on appeal.

**ISSUE 12.** Appellant argues claims 37, 38 and 43 are not rendered obvious by either Cameron or Liou in view of Diaz. Appellant contends that Diaz does not cure the argued deficiencies of Cameron or Liou. However, the argument with respect to Liou is moot because Liou is not cited in the Final Office Action presently on review. Cameron teaches the cheek pouch anchor, as disclosed above and Appellant concedes that Diaz teaches a method of carrying a substance and releasing it in the mouth; therefore, claims 37, 38 and 43 are obvious over Cameron in view of Diaz.

**DETAILED ISSUES AND ARGUMENT CONCERNING 35 USC 112, SECOND PARAGRAPH.**

**ISSUE 13.** Appellant argues the term “improved,” as used in claims 37 and 44 is not indefinite. The term is indefinite because it is a subjective term that has not been given a special definition by Appellant. Further, the claim does not include a positive recitation of a method step, but merely an “improved to dispense...” Therefore, claims 37 and 44 are indefinite.

**ISSUE 13.1.** Appellant argues claims 37 and 44 appropriately use the term “improved” and do distinctly specify what is improved and how it is improved. However, Appellant fails to positively recite the step of dispensing a substance. Therefore, claims 37 and 44 are indefinite.



## **ISSUES CONCERNING CONSTRUCTION OF THE CLAIMS AS A WHOLE.**

**ISSUE 14.** Appellant argues The Office has failed to construe each claim as a whole and to give weight to each and all claim limitations. The Office has given weight to each an every claim limitation disclosed by Appellant. The detailed description of how the prior art reads on each of those claim limitations is disclosed in the Grounds of Rejection and the responses to Appellant's arguments above.

**ISSUE 14.1.** Appellant argues the simplicity of the solution to a problem does not defeat patentability. The Office concedes that complexity is not a requisite for patentability, however, Appellant's claims invention is not novel, as detailed above.

**ISSUE 15.** Appellant argues Cameron and Liou do not meet the obviousness test to read on claim 46. The argument with respect to Liou is moot because Liou is not cited as evidence in the Final Office Action on appeal. Cameron discloses the spring coil (6) is to be used with suitable attachments (p. 1, lines 78-88). Rodriguez teaches a fluid conduit, which is used to remove excess fluid from the user's mouth during a dental procedure. Therefore, it would have been obvious to one of ordinary skill in the art to use the Cameron device with the fluid conduit of Rodriguez. With respect to the fluid conduit being inserted through the hole in the coil spring; it would have been obvious to one of ordinary skill in the art to insert the fluid conduit through the hole in the spring coil, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

***Conclusion***

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Brandon Jackson/

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